

000241

COMMITTEE ACTION SHEET

51  
04/15

COUNCIL DOCKET OF \_\_\_\_\_

☐ Supplemental   ☐ Adoption   ☐ Consent   ☐ Unanimous Consent   Rules Committee Consultant Review

R -

O -

Proposed Amendment to the Ethics Ordinance, San Diego Municipal Code section 27.3551

☒ Reviewed   ☐ Initiated   By Rules   On 2/27/08   Item No. 1

RECOMMENDATION TO:

Adopt and move this item to the full City Council.

\* VOTED YEA: Madaffer, Peters, Frye, Young, Hueso

VOTED NAY:

NOT PRESENT:

\* Corrected vote

CITY CLERK: Please reference the following reports on the City Council Docket:

REPORT TO THE CITY COUNCIL NO.

INDEPENDENT BUDGET ANALYST NO.

COUNCIL COMMITTEE CONSULTANT ANALYSIS NO.

OTHER:

Stacey Fulhorst's February 15, 2008, memorandum

COUNCIL COMMITTEE CONSULTANT \_\_\_\_\_

000242

COMMITTEE ACTION SHEET

COUNCIL DOCKET OF

3/25/08

☐ Supplemental ☐ Adoption ☒ Consent ☐ Unanimous Consent Rules Committee Consultant Review

R -

O -

Proposed Amendment to the Ethics Ordinance, San Diego Municipal Code section 27.3551

☒ Reviewed ☐ Initiated By Rules On 2/27/08 Item No. 1

RECOMMENDATION TO:

Adopt and move this item to the full City Council.

VOTED YEA: Madaffer, Peters, Frye, Young

VOTED NAY:

NOT PRESENT: Hueso

CITY CLERK: Please reference the following reports on the City Council Docket:

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COUNCIL COMMITTEE CONSULTANT

David R. 3-6-08

000243

**CITY OF SAN DIEGO  
ETHICS COMMISSION**

**Office of the Executive Director**

**MEMORANDUM**

**DATE:** February 15, 2008  
**TO:** The Committee on Rules, Open Government and Intergovernmental Relations  
**FROM:** Stacey Fulhorst, Executive Director  
**SUBJECT:** Proposed Amendment to the Ethics Ordinance  
(San Diego Municipal Code section 27.3551)

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The City's Ethics Ordinance includes a provision concerning "future employment" that prohibits City Officials from participating in a decision that involves the interests of a prospective employer. SDMC § 27.3551. Unlike the other provisions in the Ethics Ordinance that address disclosure of income, conflicts of interest, and post-employment restrictions, this provision does not include an exemption for public agencies. As a result, the ordinance could be interpreted to prohibit a Council staffer from participating in any decisions involving, for example, the interests of the County of San Diego if the staffer were pursuing a job with the County. It is relevant to note that the provision concerning future employment is based on a similar provision in state law, which includes an exemption for prospective employment with a state, local, and federal government agency. FPPC Regulation 18747.

The Ethics Commission considered this issue at its meeting on February 10, 2005, and concluded that the Ethics Commission originally intended to include an exemption for public agencies when the ordinance was first introduced and adopted in 2002. As a result, the Ethics Commission determined that, until the ordinance was amended to include a public agency exemption, it was appropriate to interpret the ordinance for both advisory and enforcement purposes as not applicable to prospective employment with another public agency.

Although the Commission staff planned to bring forth this proposed amendment the next time the Commission considered updates to the Ethics Ordinance, it has become a more pressing issue in light of the fact that there are dozens and potentially hundreds of City Officials who may be looking for jobs with other government agencies after the upcoming City elections, and who need to receive reliable advice from the Commission staff. Accordingly, the Commission considered this issue again at its meeting on February 14, 2008, and agreed to recommend the attached amendment to the Ethics Ordinance.

## PROPOSED REVISION TO SDMC § 27.3551

## (Exempting Public Agencies)

## §27.3551 Future Employment of City Officials

- (a) It is unlawful for any *City Official* to make, participate in making, or use his or her official position to influence a decision involving the interests of a *person* with whom he or she is seeking, negotiating, or securing an agreement concerning future employment.
- (b) It is unlawful for any *person* who has a matter pending before the *City* to negotiate, directly or indirectly, knowingly or willfully, the possibility of future employment of a *City Official* who is making, participating in making, or using his or her official position to influence, a decision concerning that matter.
- (c) The prohibitions set forth in subsections (a) and (b) do not apply to a *City Official's* prospective employment with a *public agency*.

<div style="display: flex; justify-content: space-between;"> <span style="font-size: 24pt; font-weight: bold;">000245</span> <div> <b>REQUEST FOR COUNCIL ACTION</b>  CITY OF SAN DIEGO </div> </div>		1. CERTIFICATE NUMBER (FOR AUDITOR'S USE ONLY)					
TO: CITY ATTORNEY	2. FROM (ORIGINATING DEPARTMENT): ETHICS COMMISSION	02/28/08					
4. SUBJECT: Amendment to the Ethics Ordinance							
5. PRIMARY CONTACT (NAME, PHONE & MAIL STA.) Stacey Fulhorst; 533-3476; MS615E	6. SECONDARY CONTACT (NAME, PHONE & MAIL STA.) Stephen Ross; 533-3476; MS615E	7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED <input checked="" type="checkbox"/>					
8. COMPLETE FOR ACCOUNTING PURPOSES							
FUND	DEPT.	ORGANIZATION					
OBJECT ACCOUNT	JOB ORDER	C.I.P. NUMBER					
AMOUNT							
9. ADDITIONAL INFORMATION / ESTIMATED COST:							
10. ROUTING AND APPROVALS							
ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIGINATING DEPARTMENT	<i>Stacey Fulhorst</i>	2/28/08	8	DEPUTY CHIEF		
2				9	COO		
3				10	CITY ATTORNEY	<i>Stephen Ross</i>	3/4/08
4	LIAISON OFFICE			11	ORIGINATING DEPARTMENT	<i>Stacey Fulhorst</i>	3/5/08
5				DOCKET COORD: <i>SC</i> COUNCIL LIAISON: <i>EF</i>			
6				<input checked="" type="checkbox"/>	COUNCIL PRESIDENT <i>Ch</i> <input type="checkbox"/> SPOB <input checked="" type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION <input type="checkbox"/> REFER TO: _____      COUNCIL DATE: <i>3/5/08</i>		
7							
11. PREPARATION OF: <input type="checkbox"/> RESOLUTION(S) <input checked="" type="checkbox"/> ORDINANCE(S) <input type="checkbox"/> AGREEMENT(S) <input type="checkbox"/> DEED(S)							
An ordinance amending the future employment provision of the Ethics Ordinance in the San Diego Municipal Code.							
11A. STAFF RECOMMENDATIONS: Approve changes to the Municipal Code.							
12. SPECIAL CONDITIONS: <u>COUNCIL DISTRICT(S):</u> <u>COMMUNITY AREA(S):</u> <u>ENVIRONMENTAL IMPACT:</u> <u>HOUSING IMPACT:</u> <u>OTHER ISSUES:</u>							

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**EXECUTIVE SUMMARY SHEET**  
CITY OF SAN DIEGO

DATE ISSUED: February 28, 2008  
ATTENTION: San Diego City Council  
ORIGINATING DEPARTMENT: Ethics Commission  
SUBJECT: An Ordinance amending the City's Ethics Ordinance

CONTACT/PHONE NUMBER: Stacey Fulhorst / 533-3476

REQUESTED ACTION:

Adopt the Ordinance amending the City's Ethics Ordinance

STAFF RECOMMENDATION:

Adopt the Ordinance

EXECUTIVE SUMMARY:

The City's Ethics Ordinance includes a provision concerning "future employment" that prohibits City Officials from participating in a decision that involves the interests of a prospective employer. SDMC § 27.3551. Unlike the other provisions in the Ethics Ordinance that address disclosure of income, conflicts of interest, and post-employment restrictions, this provision does not include an exemption for public agencies. As a result, the ordinance could be interpreted to prohibit a City Official from participating in any decisions involving, for example, the interests of the County of San Diego if the Official were pursuing a job with the County. It is relevant to note that the provision concerning future employment is based on a similar provision in state law, which includes an exemption for prospective employment with a state, local, and federal government agency. FPPC Regulation 18747.

The Ethics Commission considered this issue and concluded that it had originally intended to include an exemption for public agencies when the ordinance was first introduced and adopted in 2002. Accordingly, the Commission recommends amending the Ethics Ordinance as reflected in the attached Ordinance and Strike-Out Ordinance to include an exemption for public agencies in the future employment provision.

FISCAL CONSIDERATIONS:

None

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

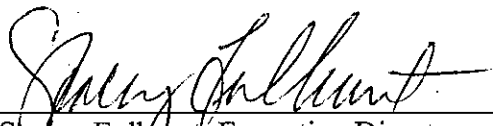
Approved by the Rules Committee on February 27, 2008

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Public discussion at Ethics Commission meeting on February 14, 2008

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

City Officials (elected officials and their staffs, unclassified City employees, members of City boards and commissions required to file Statements of Economic Interests, and consultants required to file Statements of Economic Interests).

A handwritten signature in cursive script, appearing to read "Stacey Fulhorst", written over a horizontal line.

Stacey Fulhorst, Executive Director  
City of San Diego Ethics Commission

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ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN  
DIEGO AMENDING CHAPTER 2, ARTICLE 7, DIVISION 35  
OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING  
SECTION 27.3551, RELATING TO THE CITY OF SAN DIEGO  
ETHICS ORDINANCE.

WHEREAS, the San Diego Ethics Ordinance, codified at Chapter 2, Article 7, Division  
35 of the San Diego Municipal Code, was first adopted on April 29, 2002, by Ordinance No.  
O-19055 N.S.; and

WHEREAS, pursuant to San Diego Municipal Code section 26.0414, the City of San  
Diego Ethics Commission has the responsibility of regularly reviewing the Ethics Ordinance and  
proposing updates to the City Council for its approval; and

WHEREAS, the Ethics Ordinance, at section 27.3551, contains provisions prohibiting  
City Officials from participating in municipal decisions that involve the interests of entities or  
persons with whom such City Officials are seeking future employment; and

WHEREAS, other provisions in the Ethics Ordinance such as disclosures of income,  
conflicts of interest, and post-employment restrictions, provide an exemption for public agencies;  
and

WHEREAS, the Ethics Commission believes that there is no public interest served by  
applying the prohibitions of section 27.3551 to a City Official's prospective future employment  
with another public agency, and has therefore recommended amending the Ethics Ordinance to  
expressly exclude public agencies from the scope of the prohibitions in section 27.3551; and



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WHEREAS, the City Council concurs with the proposal recommended by the Ethics Commission; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 2, Article 7, Division 35 of the San Diego Municipal Code is hereby amended by amending section 27.3551 to read as follows:

**§27.3551 Future Employment of City Officials**

- (a) It is unlawful for any *City Official* to make, participate in making, or use his or her official position to influence a decision involving the interests of a *person* with whom he or she is seeking, negotiating, or securing an agreement concerning future employment.
- (b) It is unlawful for any *person* who has a matter pending before the *City* to negotiate, directly or indirectly, knowingly or willfully, the possibility of future employment of a *City Official* who is making, participating in making, or using his or her official position to influence, a decision concerning that matter.
- (c) The prohibitions set forth in subsections (a) and (b) do not apply to a *City Official's* prospective employment with a *public agency*.

Section 2. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been available to the City Council and the public prior to the day of its passage.

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By Catherine M. Bradley  
Catherine M. Bradley  
Chief Deputy City Attorney

CMB:als  
03/04/08  
Or.Dept:Ethics Comm.  
O-2008-121

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of \_\_\_\_\_.

ELIZABETH S. MALAND  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

## STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck-Out~~NEW LANGUAGE: Underlined

(O-2008-121)

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 2, ARTICLE 7, DIVISION 35 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 27.3551, RELATING TO THE CITY OF SAN DIEGO ETHICS ORDINANCE.

**§27.3551 Future Employment of City Officials**

- (a) It is unlawful for any *City Official* to make, participate in making, or use his or her official position to influence a decision involving the interests of a *person* with whom he or she is seeking, negotiating, or securing an agreement concerning future employment.
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CMB:als  
03/04/08  
Or.Dept:Ethics  
O-2008-121